

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
JAN 15 2013  
  
CLERK

\* \* \* \* \*

BURTON LOHNES, \* CIV. 12-4196

Petitioner, \*  
-vs- \* ORDER

DOUGLAS WEBER, Warden, \*

Respondent. \*

\*

\* \* \* \* \*

Petitioner Burton Lohnes, an inmate at the South Dakota State Penitentiary, has applied for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued a Report and Recommendation recommending that the Petition be dismissed without prejudice.

The Court has reviewed the file including the timely filed objections of Petitioner Lohnes to the Report and Recommendation of Judge Simko. None of the objections overcome the findings and recommendations of Judge Simko in the Report and Recommendation. Accordingly, the Petition for Writ of Habeas Corpus of Petitioner Burton Lohnes is denied without prejudice for failure to exhaust his state remedies and for failure to seek permission to file a second or successive petition.

IT IS ORDERED that:

1. Petitioner's objections (Doc. 8) are OVERRULED and the Report and Recommendation (Doc. 7) is ADOPTED.
2. Petitioner's application for writ of habeas corpus is dismissed without prejudice.
3. A Certificate of Appealability shall not issue.

Dated this 15th day of January, 2013.

BY THE COURT:

Lawrence L. Piersol

Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

By: LLP, Deputy